

# Social Media Marketing and Ethics for Lawyers

**Kristen Marquis**



**Kristen Marquis** is an attorney and digital media expert with a background in marketing. Through her company, WebPresence, Esq., she works with attorneys to enhance reputations, establish thought leaders, and develop new business through customized social media campaigns, ethically-sound legally blogging, website design, video marketing, online reputation and public relations management. Kristen sits on the board of the Santa Monica Bar Association and the Executive Committee of the Beverly Hills Bar Association's Personal Injury Section, and volunteers at the Santa Monica Animal Shelter. Kristen is a graduate of the University of Texas at Austin, where she was an NCAA springboard and platform diver and All-American, and the Pepperdine University School of Law.

## SOCIAL MEDIA: THE BREAKDOWN

### What Is Social Media?

Without fail, the two most common questions the author is asked by other lawyers, whether during a presentation on the ethics of social media or during an early meeting to discuss the benefits of social media for their firm, are: What is social media exactly? And why do I need to be on it?

Social media refers to the use of web-based and mobile technologies to turn communication into an interactive dialogue. Social media includes blogs, Facebook, Twitter, LinkedIn, Google+, and YouTube. In less formal terms, social media is the use of social networks to engage, communicate, and build relationships.

Whether or not you need to maintain an active presence on all of the social networks is debatable, but one thing is certain: You can't ignore social media's presence as an invaluable business development tool for lawyers.

### Who Uses Social Media?

Tweens: It's both the truth and the answer you were expecting. But let's be honest, they're using social networks that many of us have never even heard of and that are not relevant for building a law firm's practice today. So let's focus on a lawyer or law firm's target audience.

Grown ups: Over 65 percent of all adults in the U.S. have at least one social media account. What this means is that Facebook is no longer for lovelorn Justin Bieber fans. Indeed, as noted below, Facebook is its own search engine and the most popular social network among the 55-and-over crowds. When thinking in terms of marketing, it's important (if not crucial) to get in front of your target audience. If they're on social media, why aren't you?

Baby boomers are not the only ones with an active social media presence. Your colleagues, law students, and prospective clients of all ages are on social media, and 77 percent of law firms surveyed have at least one social media account. Marketing teams at Am Law 100 firms highlight the many benefits of social media, from client acquisition to recruiting to media placement. One well-known California real estate law firm uses its Facebook page to recruit law students. From producing funny videos that showcase the firm's convivial atmosphere to posting job openings and legal alerts, the law firm is able to connect with its future associates in a way that on-campus recruiting alone does not. Another prominent Los Angeles personal injury firm capitalizes on the limitless reach of Twitter to publicize victories and case developments and to attract new clients in the process.

Regardless of whether your law firm is multinational or a one-woman show, there is value in social media for lawyers.

### What Is Social Media For?

First, understand what social media for business development is not for. It is not for strictly personal use. It is not just for sharing pictures of your child's lifetime developments or your adorable new puppy. It is important for lawyers to walk the fine line between using social media for business and using it for personal pleasure, as there are significant ethical considerations, discussed later in this article. As a side note, when I refer to the use of social media accounts by lawyers, I am referring to the use of professional accounts, both for law firms and for individual attorneys.

With that in mind, a good rule of thumb is the 70/30 rule: Keep 70 percent of social media activity professional and inject your personal life (a very tame version, *e.g.*, you at the finish line of the marathon you've just completed or you with your favorite shelter puppies after a long day of volunteering) to 30 percent. Clients hire attorneys they respect and believe will be committing 100 percent of their energies to their case, whether that is realistic or not. Regular updates of your globetrotting personal adventures or late nights at the coolest club may not present that image. But then again, depending on your goal, it just might.

### THE SOCIAL NETWORKS

No two social networks are the same. Although this may intimidate attorneys who have never set up their LinkedIn profile or tweeted or made a video that's gone viral, it doesn't have to. Think of the various social networks as your friends. You probably have friends from law school, who are different from your friends from childhood, who are different from your friends from the tennis club. Depending on the group, you likely discuss different topics and engage in different activities with each. What's interesting to lawyers (*e.g.*, "MICRA is the downfall of us all!") may put your golf buddies to sleep. If you can approach social media with the same considerations, you will be less overwhelmed and more successful in reaching your goals.

#### Facebook

The giant of them all (much to Google's chagrin) is Facebook. Americans spend an average of 1 billion minutes per month on Facebook. Whether they are uploading photos from their latest family adventure or monitoring what their employees are saying about their place of work, 800 million users (worldwide) are spending a majority of their days logged onto this

social website. Aware of this, and looking to capitalize on it, Facebook has increased its search engine capabilities to compete with the likes of Google. Because Facebook never wants you to leave its site (advertisers are paying far too much for you to wander elsewhere!), they are making it easier than ever to stay. In fact, let's try something: Go to Facebook, and in the search bar (located on the top of your page) type in your law firm's name. On the results page, you will see that the listed websites are from both inside and outside of Facebook. The results that show up at the top, more prominently, are the results found within Facebook. This means that if your law firm had its own Facebook page, it would appear prominently near the top of the search results for a prospective client or referral source to see, quickly and easily. The same goes for key word searches (*e.g.*, "personal injury lawyer" or "startup lawyer") performed in Facebook.

When it comes to sharing on Facebook, be selective about both the number of posts and what you post. Links to firm news, photographs of you at your local bar association event, or supporting your favorite charity are appropriate and also address the personal aspect of social networking.

#### LinkedIn

Known as the social network for professionals, LinkedIn serves both as a one-page resume and as an opportunity for you to share the most recent article you published in the Daily Journal and your numerous legal achievements, as well as for you to connect with other professionals and expand your name recognition. According to LinkedIn, over 300 million members use the site to manage their professional identity, build and engage with their professional network, and access knowledge, insights, and opportunities. LinkedIn is an ideal place to post updates about case developments, settlements, verdicts, community involvement, and, of course, links to blog posts and relevant articles. When shared tactfully and within the confines of social media etiquette, the site can be an invaluable tool to remind those in your sphere of influence, consistently and professionally, that you have a thriving, vibrant practice worthy of a referral.

In terms of what you share, it is important to keep in mind your audience on LinkedIn (*i.e.*, other professionals). A good question to ask yourself: Is this something I would want to see or read about from a colleague? Your most recent court victory is likely of interest to attorneys both inside and outside of your practice area and may be remarkable to nonlawyer

professionals. That is precisely the type of impression you are seeking to create.

LinkedIn ranks highly on Google's search results for individual professionals. In many instances, LinkedIn receives first page placement in search engine rankings. This means that when someone (*e.g.*, a potential client, member of the media, or future synergistic partner) Googles your name, one of the sites at the top of the list of search results is usually your LinkedIn profile. When the interested party clicks on that link, you want them to be thoroughly impressed by your fully completed LinkedIn profile, including a professional headshot. Photos of you walking down the courtroom steps, hugging your favorite child, or talking on the phone are generally not the best choice. Take the time to prepare and update your LinkedIn profile carefully, and you will not be sorry.

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**LinkedIn is an ideal place to post updates about case developments, settlements, verdicts, community involvement, and, of course, links to blog posts and relevant articles.**

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### Twitter

According to Twitter itself, this social network is a service for friends, family, and coworkers to communicate and stay connected through the exchange of quick, frequent messages. For lawyers, it is a way to expand your reach, globally even, without paying the often exorbitant costs associated with a statewide or national ad campaign, although Sponsored Tweets (Twitter ads that can show up on your competition's newsfeed) are certainly an option. For members of the media, Twitter is a portal for sharing, reading about, and making breaking news.

With over 600 million active users, Twitter provides forward-thinking attorneys with direct access to media and potential partners and clients—all in 140 characters or fewer. So, go ahead and share links, communicate, and engage.

Some people believe that Twitter is the most social of the networks in that it requires a certain input of energy that other social networks do not. Facebook allows the user an opportunity to share another person's status update (and indeed, that kind of social media optimization is ideal for search engine rankings), but real sharing happens on Twitter in the form of retweets. Remember Ellen DeGeneres's goal to "shut down Twitter" during the Oscar ceremonies with her celebrity "selfie"? She was hoping that so

many of her followers, and their followers, and so on, would retweet her photo that it would overload the Twitter system. And she was successful. Are your tweets creating a similar buzz?

It's also important to consider Twitter etiquette. While the goal is generally to promote yourself and your practice, you do so with social media, in part, by uplifting those around you. This means "Favoriting," "Retweeting," and even "Replying" to your colleagues' tweets. If your competition, *e.g.*, the biggest family law firm in Menlo Park, tweets a link to an interesting article on the division of digital assets in a divorce, show your online support! More likely than not, they will return the favor, and both of you will receive the increased exposure and boost in the search engine optimization (SEO) that you are looking for.

### Google+

With the machine that is Google behind it, this social network is not to be ignored. Although not yet as popular as Facebook or Twitter, Google+ (also known as G+) offers perks that other social networking sites do not, most notably, Google Authorship.

Have you ever wondered why, when you are performing a Google search, some of the website results on the list have a small avatar (photograph) to the right of the link? This is due to Google Authorship, which allows a Google user to connect his or her website (or blog) with his or her Google+ account. The result is increased search engine optimization and the perception of familiarity and trust, because the person Googling a particular topic is able to connect a person with the information sought, and more. Even if you don't spend any time on Google+ adding people to your circles or "plus one-ing" shared links, the benefits of Google Authorship are alone worth signing up.

If you decide to use Google+ in a "social" manner, be mindful that what you share will show up in Google search results. Therefore, Google+ is a great place to share your legal achievements, blog posts, and other professional endeavors.

While some people find that Google+ is not as user-friendly as Facebook as a means of connecting with friends or colleagues, Google+ does offer a unique way to interact: Google Hangouts. These video chat facilities allow for you work seamlessly with counterparts in your other (Northern or Southern) California offices, for example, without the need for fancy video conferencing capabilities.

## WEBSITES

### Why Do I Need One?

You do need a website. We are living in a digital age. Even if you are like 90 percent of my clients whose business comes through word-of-mouth referrals, you must believe the statistics: Almost 40 percent of men and women go to the Internet first to find out more information about a particular attorney or to search blindly to hire one. Referrals generally come in twos, meaning that your potential client is talking to a handful of trusted confidantes and is receiving your name along with the name of another attorney to contact about his or her particular legal issue. Therefore, you want to make sure that when a potential client types your name in the search window, the results that appear are ten websites (the maximum number of results on a Google search page is ten) that highlight the many reasons to hire you. One of those listings will, of course, be LinkedIn. Another? Your firm's website, with your attorney biography, which should list additional reasons why you are the person for the job.

For example, late in 2013, I was in the market for a new certified public accountant (CPA). I expressed my need to two unrelated individuals and received two different names as potential solutions to my needs. The first thing I did was turn to Google. Typing in the first referral's name, I found his very dated and not easy to navigate website. Well, I thought, he is a CPA, and much like attorneys, CPAs are often conservative in terms of digital media and marketing. So I continued to scroll down the search results. Second on the list of search results was a link to a LinkedIn profile that had clearly never been properly set up. There was no photo and no information about his education or experience. Now I started to get worried. The third item on the search results list was a link to his CPA firm's Yelp reviews—two stars out of five. The reviews were terrifying (who wants to be audited by the IRS?) and numerous. I briefly questioned my friend's judgment and called, without reservation, the second name on the list, who, coincidentally, had a much nicer (although not modern) website, no negative online reviews that I could find, and an e-mail address that wasn't his Yahoo account.

If your interest lies in increased media exposure, a user-friendly, modern law firm website is a necessity. When journalists and reporters begin their research, they generally begin on the Internet. If they're looking for a quote, a talking head, or an expert in a specific field, they want the best option. And in our world focused on appearances, the best option often

looks like the one with the nicest, most professional website.

### E-mail Addresses

Your e-mail address should not be neglected. Which of these looks more professional: "my name@law firm.com" or "Best.Attorney.Ever@gmail (or yahoo).com"? This first, of course. Without a website with a domain name relating to your law firm, you will not have an e-mail address linked to that domain name. Ideally, your domain name will be that of your law firm or will be somehow related to your practice area(s). If, for example, you are a personal injury lawyer in Los Angeles and TopPersonalInjuryLawyerinLA.com was available, that would be an SEO dream—and also easy for people to remember.

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**Google Authorship, which allows a Google user to connect his or her website (or blog) with his or her Google+ account. The result is increased search engine optimization and the perception of familiarity and trust . . .**

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### "Mobile Friendly" Design

Once you have a website, it is crucial to ensure that it is responsively designed and mobile- and tablet-friendly. About 1.2 billion people use their smartphones to access the Internet. What's more, some statistics show that not having a mobile website is the equivalent of shutting down your practice an extra day each week—wonderful if by choice, but a potentially substantial loss in business if not. The last thing you want is interested parties coming to your website and leaving because they can't "click to call" or easily scroll through your practice areas and firm news to find out more about you.

## BLOGGING

### Why Blog?

The reasons for blogging are endless, and often debated. Some claim that the goal of blogging is *not* to bring in new business but to enhance a lawyer's knowledge and reputation within his or her area of practice. I say, why not do both? A blog, by nature, is ever-changing. Why not cultivate your legal blog both as a business development tool and as an opportunity for you to share your expertise about a niche area of the law?

### But I Don't Have Time to Blog!

Of course, you have a busy practice to consider. The financial rewards of a legal blog are certainly not immediate and generally indirect (*e.g.*, increased quality traffic to your website, expanded awareness of your relevance in a field). What's more, in order to reap any of these benefits, you must be consistent with your blogging. For my clients, I suggest two blog posts per week as the minimum. This requires diligently sticking to your own editorial calendar or diligently requesting that other resources (*e.g.*, associates or legal bloggers) blog on your firm's behalf. Regular blogging requires a lot of diligence, but is worth it in the end.

### More About the Benefits of Blogging

According a leading law firm marketer (ALM) survey, 70 percent of law firms blog and 40 percent of those firms state that blogging has brought them new business (further supporting the proposition that blogging works for both business development and reputation enhancement). In terms of online business development, consistent legal blogging provides the major driver of SEO: content. Fresh, relevant, high-quality content is the Holy Grail of search engine optimization. It used to be that stuffing a poorly written, nonsensical article with practice area key words and your law firm name got you top search engine placement. Google, wanting to provide the highest quality user experience, caught onto that. Thanks to various updates in Google's page placement algorithm, websites were penalized for using these so-called "Black Hat SEO" tactics. In turn, websites that promoted quality over quantity were rewarded. Accordingly, it is crucial to ensure that your legal marketing team is providing you with unique, high-quality content, for both SEO and legal ethical purposes. By updating your blog with new content on a regular basis in the form of posts (ideally linked to your Google account for Google Authorship), you are sending signals to Google to pick up your content in search results. You also create links to share across your social networks, driving traffic back to your website.

If you are looking to increase your online and off-line reputation, your law firm's blog is an ideal platform. With a blog, you are able to provide timely commentary on changes in case or statutory law, opinions on breaking legal issues or current events, and insight on issues specific to your practice areas. A blog enables you to establish yourself as a reliable resource for the local and national community. In-house counsel look to law firm blogs for guidance in their decisions to hire outside counsel. Many corpora-

tions concerned with the bottom line seek less expensive, but just as effective and knowledgeable, attorneys on matters that cannot be handled in house. Why not be that attorney? A legal blog will give you the opportunity to share your experienced voice, provide alternatives to legislation that you or your clients are not happy with, and become the go-to contact on matters relating to your practice.

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The well-known legal blog, the Volokh Conspiracy, was started in 2002 as a way for UCLA law professor Eugene Volokh to share his opinions on matters related to politics and the law. In a matter of years, the blog grew to become one of the most popular legal blogs on the web, with numerous high-profile contributing authors and over 25,000 unique visitors on weekdays. What's more, the Volokh Conspiracy has been cited by traditional media such as the New York Times and was credited as having influenced a partially successful constitutional challenge to the Patient Protection and Affordable Care Act (Pub L 111-148, 124 Stat 119). The blog was recently "adopted" by the Washington Post, where it now sits behind the Post's pay wall. Still think legal blogging doesn't work?

### What Do I Blog About?

Now that you're convinced of the benefits of blogging, you are probably wondering what you should blog about. Start with what you know: your practice areas. And even better, if you have one or two niche practice areas where you feel that your expertise shines through, write about those.

Before you start, however, it is important to define your goals for your blog. If you are blogging mainly for business development, consider your target audience. If they are not practicing attorneys (and for many of you, they will not be), you need to write your posts to the level of their understanding of the law. This means breaking down legal issues, even ones you believe are a matter of common sense, to their simplest form. This is often the biggest challenge for attorneys who have been practicing for a long time and who forget how nonlawyers think and how much or how little they actually know about the law. The good news is that by dividing the subject matter into

many smaller subtopics, you are creating several more potential blog posts. As a result, you'll have content for a whole series of blogs!

If you are writing with in-house counsel in mind, consider topics that are relevant to their business. Recent court decisions, changes in local and federal laws, or the current legal climate are all of likely interest to your potential readers. Draw readers to your blog with informative, lively posts that will educate and inform them—and make them intrigued enough to give you a call the next time they have a need for an attorney skilled in your practice area.

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## ETHICS

Ethics: Every lawyer's favorite topic. The State Bar has rules that cover attorney advertising and marketing on the Internet, and for good reason. Thanks to the Internet, an attorney looking to find new clients is able to reach potential clients through his or her computer relatively easily. However, the average Internet user reads at the sixth-grade level. If the person targeted as a potential new client does not have the education or intellectual proficiency to understand the typical disclaimer—*i.e.*, that he or she has not created an attorney-client relationship by sending an e-mail through a contact form on a lawyer's website or direct-messaging on Twitter—unscrupulous attorneys could take advantage.

The California Rules of Professional Conduct and the Business and Professions Code apply in this setting. According to the State Bar of California's Standing Committee on Professional Responsibility and Conduct (COPRAC) Formal Opinion No. 2001-155 (Op. 2001-155), the "aspects of professional responsibility and conduct" that an attorney must consider when providing an Internet website with information for the public about his or her availability for professional employment include the rules governing attorney advertising in Cal Rules of Prof Cond 1-400 and Bus & P C §§6157-6158.3. COPRAC Formal Opinion No. 2012-186 (Op. 2012-186) makes clear that the same rules governing attorney advertising apply to social media communications, and that those rules are not relaxed merely because it might be more difficult to comply with them in a social media setting.

## Ethics and Your Website

According to Op. 2001-155, an attorney's website that provides information to the public about the attorney's availability for professional employment (and the mere fact of having a website meets that test) is both a "communication" under Cal Rules of Prof Cond 1-400(A) and an "advertisement" under Bus & P C §§6157-6158.3.

### Your Website as a "Communication"

California Rules of Professional Conduct 1-400(A) defines a "communication" as

any message or offer made by or on behalf of a member concerning the availability for professional employment . . . directed to any former, present, or prospective client, including but not limited to the following: . . . (2) Any . . . brochure, or other comparable written material describing such member, law firm, or lawyers; or . . . (3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof.

As such, your website is subject to the prohibitions on false, misleading, and deceptive advertising in Bus & P C §§6157-6158, discussed below, as well as the standards for communications set forth at the end of Rule 1-400. The content of the pages comprising the website, including any images and sounds, must be prepared carefully to satisfy these rules.

### Your Website as an "Advertisement"

Business and Professions Code §6157(c) defines an "advertisement" as

any communication, disseminated by television or radio, by any print medium . . . or by means of a mailing directed generally to members of the public and not to a specific person, that solicits employment of legal services.

Generally speaking, however, a law firm's website is not a "solicitation" under Cal Rules of Prof Cond 1-400(B) even if it includes electronic mail facilities allowing direct communication to and from the attorney. Rule 1-400(B) defines a "solicitation" as

any communication (1) [c]oncerning the availability for professional employment of a member or a law firm in which a significant motive is pecuniary gain; and (2) [w]hich is; (a) delivered in person or by telephone, or (b) directed by any means to a person known to the sender to be represented by counsel in a matter which is a subject of the communication.

Note that under Rule 1-400(B)(2)(b) the communication must be directed to someone who the sender knows is represented by counsel in a matter that is a

subject of the communication. This standard is generally not met by communications that are not directed to anyone in particular, but instead are made to the world at large.

In Op. 2001–155, the hypothetical example involved a website that included a description of the attorney’s law firm and its history and practice; the education, professional experience, and activities of the firm’s attorneys; law-related images; and an electronic mail form allowing for communication to any attorney in the firm. Formal Opinion 2001–155 stated that such a website was not a solicitation within Rule 1–400(B), although the website was an advertisement under Bus & P C §§6157–6158.3 and therefore was required to comply with the rules governing attorney advertising.

#### False or Misleading Statements Prohibited

According to Op. 2001–155, an attorney’s website must conform to the requirements that the communication not be false or misleading (Cal Rules of Prof Cond 1–400(D)(1)–3)) and not fail to indicate clearly, expressly, or by context, that it is a communication (Cal Rules of Prof Cond 1–400(D)(4)). Under Rule 1–400(D), a communication or a solicitation (as defined) shall not

- (1) Contain any untrue statement; or
- (2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public; or
- (3) Omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public; or
- (4) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation.

An attorney can quickly cross ethical lines if his or her law firm’s website contains any false or misleading statements or any guaranty of outcome or promise of quick payment. See also Bus & P C §6157. Indeed, Bus & P C §6158 provides that the message (*e.g.*, your website) as a whole may not be false, misleading, or deceptive, and the message as a whole must be factually substantiated.

False or misleading statements can appear more easily than one might think in poorly written legal blogs or in testimonials. If you are outsourcing your legal blogging, be certain that your writers are providing information that is accurate and truthful. The last thing you want is to upload a post to your website’s blog stating that the statute of limitations on filing a personal injury claim is 3 years, have someone find your blog, read it, rely on that information, and then lodge a complaint with the State Bar after they realize

they’ve waited 1 year too long and have lost their chance to recover damages.

#### Does Your Practice Cross State Lines?

It is important to note that if your law firm has a multi-state practice, your website may be subject to regulation by other jurisdictions. California’s approach is quite different from the approach taken by other states, where the rules regarding attorney advertising and solicitation may be more strict.

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**Formal Opinion 2012–186 makes clear that the same rules that apply to attorney websites apply to attorney social media accounts, and the rules are not relaxed merely because it might be more awkward or difficult to comply with them in a social media context.**

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#### Two-Year Retention Requirement

Finally, if you are considering updating the content on your website, don’t toss the current copy out. California Rules of Professional Conduct 1–400(F) adds the requirements that the attorney must:

retain for two years copies or recordings of any communications by written or electronic media and that these copies or recordings be made available to the State Bar if requested. These requirements apply to each page of every version and revision of the website.

#### Ethics and Social Media

Social media presents another way to walk on the wrong side of the ethical line. Formal Opinion 2012–186 makes clear that the same rules that apply to attorney websites apply to attorney social media accounts, and the rules are not relaxed merely because it might be more awkward or difficult to comply with them in a social media context. Although both websites and social media channels are Internet-based media, the marketing approach is often quite different. Twitter, for example, requires you to deliver your point in under 140 characters, which limits your ability to expound on your talents. Sometimes unknowingly, however, you may make statements that require disclaimers in accordance with the standards for attorney advertising in Rule 1–400.

Formal Opinion 2012–186 includes a helpful list of examples of short statements or remarks that an attorney might post on Twitter or another social media channel, with an analysis of whether they cross the

ethical line. Certain statements, such as “Won my big case today, going out tonight to celebrate!” are not “communications” under Cal Rules of Prof Cond 1–400(A) because they do not include an offer about the availability for professional employment. Other statements, however, such as “Got another drunk driver off today. He says I am the best! Call me if you want me to work my magic for you!” are “communications” under Rule 1–400(A) and are subject to the Rule 1–400 prohibitions against false or misleading advertising discussed above. Study the examples in Op. 2012–186 before engaging on social media. Err on the side of caution and don’t include anything that could be taken as an offer of your availability for professional employment.

### Ethics and Client Testimonials

If you want to include client testimonials in your online marketing campaign—and you likely do because they are wonderful tools for self-promotion—remember that an attorney cannot disseminate “communications” that contain testimonials or endorsements unless the communication also includes an express disclaimer, such as “this testimonial or en-

dorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.” See Cal Rules of Prof Cond 1–400 Standard (2). Be aware that under that State Bar standard, a testimonial or endorsement is presumptively misleading if it does not include such a disclaimer. See Rule 1–400 Standard (2). Your website should therefore prominently display a disclaimer in clear language.

### WRAPPING UP

Lawyers should use their best judgment and common sense when it comes to social media and the Internet. Even if a statement is not, per se, unethical, consider refraining from sharing a statement that humiliates another lawyer, disrespects the judicial system, or otherwise debases the practice of law. I’ve seen attorney Facebook pages and Twitter feeds that rip into opposing counsel, juries, judges, and more. With the public perception of the legal profession as it is, social media best practices discourage such behavior. Social media is for building relationships and law practices, and it requires time, energy, patience, and observation of the ethical rules governing its use.